1950

File No. S. Belgaum 13/50

Legal DEPARTMENT

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Examined

Belgaum Suit

Subject:—

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Civil Suit No. 140 of 1948

Sadashiv Prabhakar Hallikeri — Plff

vs.

The State of Bombay — Defd

For a declaration that the order of the Inspector General of Police dated the 25th June 1948 removing the Plff from Govt service is illegal and for recovery of Rs. 200 as damage.

S. Belgaum 13/50

File No.

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Special Civil Suit No. of 194

In the Court of the Civil Judge, Senior Division,
At Belgaum.

Plaintiff :- Sadashiv Prabhakar Hallikeri, age 30, Ex-Police Sub-Inspector, Nipani, now residing at Dharwar.

Against.

Defendant :- The Province of Bombay.

Claim Rs. 20%-.

The above named Plaintiff begs to state as below :-

(1) The Plaintiff entered the Police Department of the Province of Bombay as the Sub-Inspector of Police, in the year 193 and served in the Districts of Bijapur, Belgaum and Satara. He was serving as Sub-Inspector of Police in the District of Satara at the time of his removal from service in the year 1948, July for no fault of his

Government removed him from service on the following grounds set-forth hereafter.

(2) That the Plaintiff was serving as Sub-Inspector of Police, at Nipani in the district

Belgaum, there occurred the murder of a merchant- Haji Habib by name, in the month of March 1946. The Plff, as in duty bound informed his superiors immediately about the incident and according to the provisions of the Police Manual, the further investigation was done under the direct supervision of the Police Inspector, Dy. S.P., N.D., and the D. I. P., Belgaum, who arrived on the scene. He took all legal steps in the investigation of the offence in due discharge of his duties. The charge sheet was sent up against the person responsible for the murder who was committed to the Court of Sessions, Belgaum to take his trial, but he was acquitted as in the opinion of the Sessions Judge, the direct evidence was not reliable. A reference was made to the District Magistrate, Belgaum to prefer an appeal against the order of acquittal of the accused. But the Government of Bombay did not think it worthwhile to prefer such an appeal.

(3) In the mean time, Government was moved to take steps against the Plaintiff on the ground that there was improper investigation of the murder case by the Plaintiff, and the Inspector General of Police, Bombay had also forwarded an anonymous petition received by him against the Plaintiff. The Government directed the District Magistrate to make an enquiry in the matter and to submit a report, inspite of the reports made by the D.S.P., Belgaum and Dy.S.P., N.D., Belgaum to the effect that the Plaintiff was not at all responsible for any act and that he was not to be blamed for anything. The District Magistrate asked the S.D.M., N.D., (Mr. Alikhan) to hold the enquiry. The S.D.M., made a report without making any enquiry, holding the Plaintiff guilty of making improper investigation, without following the statutory

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procedure in holding enquiries. The Plaintiff submits that the so-called enquiry held by the S.D.O., was not at all a departmental enquiry. The charges framed by the S.D.O., are as below :-

i. " You went to the scene of offence when the life of Hasi Habib was not ebbed out. You must have ascertained the name of the culprit from the deceased or from any one else present at that time, and you have suppressed the name of the culprit. The First Information Report made by you did not contain the name of the culprit."

ii. " The Panchanama of the scene of offence was taken up on 21-3-1946 but you interrupted it ostensibly owing to failure of light till the next day. Next day you did not continue the Panchanama which was actually completed on 23-3-1946. The Panchanama was un-necessarily delayed because it was incorrectly drawn up. It did not mention (1) another wound, (2) three cartridges in the deceased's pocket which were mentioned in the 2nd inquest Panchanama held by the Resident Magistrate, at Chikodi".

" The inquest held by you shows that a letter from the S.D.P.O., to - Bhorniger- the wife of the deceased was found in the pocket of the deceased at the inquest. You have no mentioned anywhere as to what became of the letter. It was not also very

clear as to what the contents of the letter were".

(4) Though these points have been considered by the Sessions Judge, Belgaum, during the trial who had followed the case very minutely, and who held that what was done by the P. S. I., (Plaintiff) was correct and that there was no dereliction in his duty whatsoever. The enquiry had to be held as the Government wanted it to be held. The S.D.I., submitted his report holding the charges against the Plaintiff as proved even against the findings of the Sessions Judge, Belgaum and of the D. S. P., who held an enquiry and submitted the report.

(5) Relying on the report of the S.D.I., the Government expressed the opinion that the charge of improper investigation against the Plaintiff has been proved and that he should no longer be allowed to continue in service. Government again directed the I. G. P., to hold Departmental enquiry against the Plaintiff as to why he should not be discharged from service. The Plaintiff submits that the Government was wrong in prejudging the Plaintiff's case without a proper departmental enquiry and this action of the Government is illegal.

(6) The D. S. P., Belgaum, who held the Departmental proceeding, naturally could not dare to go behind the opinion expressed by Government. The enquiry was held in an atmosphere of prejudice and suspicion. Even the important witness like the S.D.I., who had made an adverse report against the Plaintiff was not offered for cross-examination, though the Plaintiff repeatedly demanded. The Plaintiff would have conclusively proved that the S.D.I., was

personally working against the Plaintiff and his relatives and to satisfy his own spite, he had made a malicious and wrong report against the Plaintiff. The whole proceedings are illegal and the findings arrived at by the Enquiring Officer are, therefore, unfair and perverse. The Plaintiff submits that the order of discharge by the I.G.P., is illegal and ultra vires. The Plaintiff preferred an appeal against the order of discharge to the Government. The Government rejected the appeal without looking into the necessary papers and even without the order of the I.G.P., before them. This action of the Government is highly objectionable and illegal.

(7) On account of the improper and illegal discharge from service, the Plaintiff has severely suffered mentally, physically and financially. The Plaintiff has been lowered in the estimation of the public, owing to the illegal action of the Government. Hence, the Plaintiff has to file this suit for declaration that the order of removal from service is illegal and also for damages.

(8) The Plaintiff has nominally valued his mental suffering at Rs. 50/-, his physical suffering at Rs. 50/- and his financial loss at Rs. 100/-. Thus, the Plaintiff has claimed in this suit damages of Rs.200/- from the defendant.

(9) As this is a suit for declaration and damages the suit is valued at Rs. 200/- and the Court fee is paid on the said amount.

(10) The cause of action arose on 30th May the Government rejected the appeal of the Plaintiff i.e., on 30-9-1948.

(11) This Court has jurisdiction to hear the suit, as the cause of action arose within the jurisdiction of this Court.

(12) The Plaintiff prays :-

Setting aside the contentions of the defendant it be declared :-

(a) That the order of removal from service is illegal and ultra vires,

(b) That the order of the Government based on the report of the S.D.M., is illegal.

(c) That the Departmental proceedings held are illegal.

(d) That the order of the Government rejecting the Plaintiff's appeal is illegal.

(e) Damages of Rs. 200/- be awarded to the Plaintiff from the defendant.

(f) Such other equitable reliefs be awarded as the Court deems fit.

(g) That the costs of the Plaintiff be awarded from the defendant.

(h) That the Plaintiff be permitted to amend the plaint, if and when necessary.

The Plaintiff prays that the decree as above be awarded to the Plaintiff.

Dharwar,)
)
Dated :-) Plaintiff.

In this, I Sadashiv Prabhakar Hallikeri of Dharwar,

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solemnly declare that what is stated in the plaint from paras 1 to 12 (h) is true to the best of my knowledge and information.

Dharwar,
Dated-

Plaintiff.

Drafted and presented by

Pleader.
Advocate.

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Belgaum Civil Suit No.140 of 1949.

This is a suit filed by an ex-Police Sub-Inspector for a declaration that the order of the Inspector General of Police removing him from service is illegal and claiming damages of Rs.200. On a charge of making a faulty investigation in a murder case, the plaintiff was removed from Govt. service after a departmental enquiry. The order passed by the Inspector General of Police is correct and in accordance with the relevant provisions of the Govt. of India Act and the Bombay District Police Act to which the plaintiff was subject. The defence of the suit may be sanctioned on the lines of the accompanying brief.

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Suit No. 140 of 1949.

IN THE COURT OF CIVIL JUDGE, SENIOR DEVISION.,
AT BELGAUM.

1. Sp P. Hallikeri. of Dharewar. ... .. Plff.

against.

1. Province of Bombay ~~xxxxxxxxxx~~ .. ... Defts.

Herein the Written Statement of deft is as under:-

1. The suit is false and vexatious and as such the allegations of the plff are denied in toto.
2. The plaint does not disclose any cause of action against -- the defts. Hence the suit is not tenable.
3. It is incorrect to say that the plff was dismissed as a -- result of inquiry conducted by Mr. Allabux. The order of his removal was passed by Inaspector General of Police on a -- departmental inquiry in accordance with the rules governing such departmental inquiry. In fact Mr. Allabux conducted -- only a confidential inquiry on a consideration of which Govt. directed the Inaspector General of Police to make a depart--mental inquiry in accordance with the rules in that behalf.
4. The plff was removed from service by the Inaspector General of Police in exercise of the powers confered on him by section 29 sub-section 3 of the Bombay District Police Act after - following the procedure laid down in section 30 of the said Act. The procedure laid down in these rules was duly followed in the plff's case. Three distinct charges were framed against him and the plff had the opportunity of cross-examining all the witnesses against him. He was also given every facility to produce defence evidence. No prejudice has occasioned to the plff by reason of non-examination of Mr. Allabux. --- Assuming that plff had no opportunity to cross-examine Mr. Allabux, this circumstance alone, cannot vitiate the depart--mental proceedings. The departmental proceedings against th plff have been conducted in accordance with the rules of inquiry and also with the rules of natural justice. The

Plff's contention that the inquiry was illegal, has no substance . Assuming without admitting that the rules of inquiry were nor properly observed, mere breach of these rules, does not give any cause of action to the plff. The tenure of Police Officers of the subordinate rank, is subject to the provisions of the rules made by Govt. under section 29 of the District Police Act. A breach of those rules, does not entitle the plff to claim -- damages for wrongful dismissal. The rules are directory and x not mandatory. In the inquiry held against the plff by the Inaspector General of Police, they procedure laid down - in sub-section 3 of section 240 of Govt. of India Act has been followed even though, that section had no application to the plff's case. After the District Superintendent of - Police had submitted inquiry, the Inaspector General of - Police, called upon the plff, to show cause why the proposed punishment of removal should not be inflicated on him. The order of removal from service, was passed after plff had given his statement as required from him.

5. Assuming that the Sessions Judge did record the findings - as alleged by the plff in his favour, still, the said -- findings, cannot in law, preclude Government from directing departmental inquiry against the plff.

6. It is denied that the departmental inquiry was held in an - atmosphere of prejudice and suspecion. In fact, inquiry was held in the lawful exercise of the powers conferred on Govt. by statute and the rules. The inquiry was open and the plff was given every opportunity to meet the charges against him and to produce his evidence. The inquiry proceedings were - conducted in accordance with the rules of natural justice and as well as procedure laid down by the rules.

7. Plff is not entitled to the declaration and the damages asked for. The suit may therefore be dismissed with costs.

Dist. Govt. Pleader,
Belgaum.

(Verification)

13 49

Suits :

Belgaum.

For a declaration that the order of the Inspector General of Police dated the 25th June 1948 removing the plaintiff from Government Service is illegal and for recovery of Rs. 200 as damages.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 7295.

Bombay Castle, 30th May 1950.

Letter from the District Superintendent of Police, Belgaum, dated the 22nd December 1949—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BELGAUM.
CIVIL SUIT No. 140 OF 1949.
Sadashiv Prabhakar Hallikeri ... ... Plaintiff;
versus
The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Belgaum, No. 7070, dated the 25th May 1950—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

R. T. Katarki

P. M. LAD,
Secretary to Government.

Original for

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[P.T.O.

To

*The Home Department,
*The Inspector General of Police, Poona,
*The District Superintendent of Police, Belgaum,
The District Government Pleader, Belgaum (with two copies of the brief).

*With a copy of the brief.

Issue cir 20/9/50.

No. of 1950.

Copy forwarded for information and guidance to

Subtd. after issue —

File in S. Belgaum/50 (new)

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BELGAUM CIVIL SUIT No. 140 OF 1949.

Chronological Statement of Facts.

The suit is filed by Mr. S. P. Hallikeri, an ex-Police Sub-Inspector, for a declaration that the order of the Inspector General of Police dated the 25th June 1948 removing the plaintiff from Government service is illegal and for recovery of Rs. 200 as damages.

2. In March 1946 the plaintiff was a Sub-Inspector of Police at Nippani in the district of Belgaum. On 21st March 1946, one Hazi Habib, a wealthy merchant of Nippani, was murdered in his own house between 4 and 5 p.m. The accused Dad Mahomad Faizullakhan, who was the brother of Mehernigar the wife of the deceased Hazi Habib, was tried for the offence of murder by the Sessions Judge of Belgaum and was eventually acquitted on the 23rd of August 1946.

3. On the 2nd of October 1946, one Rahimtulla Allimahamad Bramhachari, the brother of the deceased Hazi Habib, submitted an application to the Minister for Law and Order in which he made allegations against the faulty investigation conducted by the plaintiff into the case of the murder of Hazi Habib and requested Government to order a thorough enquiry into the investigation conducted by the plaintiff. Thereupon Government in their Express Letter No. O/2970-F, dated 31st January 1947, addressed to the Inspector General of Police, Bombay, directed that an enquiry should be made into the various allegations against the Police Sub-Inspector Mr. Hallikeri, who was the Investigating Officer in the case relating to the murder of Hazi Habib.

4. Pursuant to the above orders Mr. M. A. Allabux, Sub-Divisional Magistrate, First Class, Chikodi, was directed to conduct a confidential enquiry. On 8th January 1948, the District Magistrate of Belgaum, after considering the result of the enquiry conducted by Mr. Allabux, submitted a detailed report to Government pointing out that the charges of improper investigation framed against the plaintiff had been proved. After considering the District Magistrate's report, Government in their letter No. O/2970-G, dated 7th February 1948, directed the Inspector General of Police to hold a departmental enquiry against the plaintiff calling upon him to show cause why he should not be discharged from service. The enquiry was accordingly conducted by the District Superintendent of Police. The charges framed against the plaintiff were :—

(i) That he went to the scene of offence when the life of the deceased Hazi Habib had not been extinct; that he must have ascertained the name of the culprit from the deceased or from someone else at the time, but he suppressed the name of the culprit and the first information report made by him did not contain the name of the accused;

(ii) The panchnama was taken up on the 21st March 1946 but the plaintiff interrupted it ostensibly owing to the failure of light till the next day, that the next day however the panchnama was not continued but was actually completed on 23rd March 1946. It was thus unnecessarily delayed and was incorrectly drawn;

(iii) That at the inquest held by the plaintiff a letter from the Sub-Divisional Police Officer to

Mehernigar, the wife of the deceased, was found in the pocket of the deceased but the plaintiff did not mention it anywhere as to what became of that letter or as to what were the contents thereof.

As a result of the departmental enquiry the District Superintendent of Police, Belgaum, found charges Nos. (i) and (ii) proved against the plaintiff.

5. On 30th April 1948, the Inspector General of Police passed an order in which he agreed with the findings of the District Superintendent of Police as regards the first two charges and directed that the plaintiff should submit personally within fifteen days his written statement showing cause why the proposed punishment of removal from service should not be inflicted upon him.

6. On 25th June 1948, the Inspector General of Police, after considering the plaintiff's statement, passed an order that the plaintiff should be removed from the Police Force from the date of the receipt of the order.

7. The plaintiff preferred an appeal to Government but it was rejected.

8. On 24th June 1949, the plaintiff gave a notice of suit under section 80 of the Civil Procedure Code and on 25th August 1949, he filed the present suit in the Court of the Civil Judge, Senior Division, Belgaum.

Grounds of Defence.

The plaintiff has made vague and general allegation that the order removing him from service is illegal. His contentions are :—

(1) That the enquiry made by the Sub-Divisional Magistrate, Mr. Allabux, was not at all a departmental enquiry;

(2) That Government was wrong in ordering the departmental enquiry against him on the report of the Sub-Divisional Magistrate in spite of the findings of the Sessions Judge that there was no dereliction of duty on the plaintiff's part; and

(3) That the departmental enquiry was held in an atmosphere of prejudice and suspicion and the plaintiff was not allowed to cross-examine the Sub-Divisional Magistrate; and that for these reasons the order removing him from service is illegal.

2. So far as the first ground of the plaintiff is concerned, the facts clearly show that the plaintiff was not dismissed as a result of the enquiry conducted by Mr. Allabux. That was only a confidential enquiry on consideration of which Government directed the Inspector General of Police to make a further departmental enquiry in accordance with the rules governing such departmental enquiries. The order of his removal was passed on consideration of the result of that enquiry and therefore the first ground of the plaintiff has no substance whatever. Similarly the findings of the Sessions Judge do not preclude Government from directing departmental enquiry against the plaintiff.

3. The plaintiff was removed from service on 25th June 1948 when the Government of India Act, 1935, was in force. The provisions of the Government of India Act, 1935, which are relevant to this suit are sections 240 and 243. The provisions of section 240 have been incorporated with necessary modifications in Articles 310 and 311 of the Constitution of India,

but the Constitution does not contain any provision corresponding to section 243. However, Article 367 provides that the General Clauses Act of 1897 shall apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Indian Union. Under section 6 of the General Clauses Act, 1897, the repeal of an enactment does not, unless a different intention appears, *inter alia* affect (1) any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or (2) affect any legal proceeding or remedy in respect of any such right, privilege, obligation or liability, etc., and such legal proceeding or remedy may be instituted, continued or enforced as if the repealing Act had not been passed. In view of these provisions, therefore, the rights and remedies of the parties to this suit will be governed by the relevant provisions of the Government of India Act, 1935.

4. Now under section 240 sub-section (*1*) except as expressly provided by the Act every person, who was a member of a civil service of the Crown in India or held any civil post under the Crown in India, held office during His Majesty's pleasure. Sub-section (*2*) porvided that no such person could be dismissed from service of His Majesty by any authority subordinate to that by which he was appointed and under sub-section (*3*) no such person as aforesaid could be dismissed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The plaintiff is however a member of the subordinate rank of the Police Force for whom a special provision was made in section 243 of the Government of India Act, 1935. That section provided :—

"Notwithstanding anything in the foregoing of this chapter, the conditions of service of the subordinate ranks of the various Police Forces in India shall be such as may be determined by or under the Acts relating to those Forces respectively."

In the case of *North-West Frontier Province* vs. *Suraj Narayan Anand,* Law Reports LXXV I. A. P. 343, the Lordship of the Privy Council expressly held that the right of dismissal is a condition of service within the meaning of those words in section 243 and that that section excludes the operation of sub-sections (*2*) and (*3*) of section 240 in respect of members of the Subordinate Police Force. Therefore in view of the terms of section 243 as interpreted by the Privy Council, the provisions of sub-sections (*2*) and (*3*) of section 240 will not apply to the plaintiff's case. The conditions of service of the plaintiff are determined by the Act relating to the District Police Force, *viz.,* the Bombay District Police Act of 1890. The plaintiff was removed from service by the Inspector General of Police in exercise of the powers conferred on him by section 29 sub-section (*3*) of the Bombay District Police Act after following the procedure laid down in section 30. The concluding sentence of sub-section (*3*) provides that the exercise of the power conferred by that sub-section shall be subject to such rules and orders as may be made by the Provincial Government in that behalf. The rules governing disciplinary enquiries into the misconduct of Police Officers are given in paragraphs 1278 and 1284 of Volume III of the Bombay District Police Manual. The record of this case shows that the procedure laid down in those

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rules for holding departmental enquiries was duly followed in the plaintiff's case. Three distinct charges were framed against him and the plaintiff had the opportunity of cross-examining all the witnesses against him. The enquiry was conducted by the District Superintendent of Police and the plaintiff had ample time to be thoroughly acquainted with the charge and the evidence against him. He was also given every facility to produce defence evidence and to avail himself of a written statement of defence and the witnesses whom he produced after giving a lengthy written statement were also examined by the District Superintendent of Police. The only complaint for the plaintiff seems to be that he was not allowed to cross-examine the Sub-Divisional Magistrate, Mr. Allabux, who had previously conducted a confidential enquiry. There is however nothing to show that the plaintiff's case was prejudiced at the departmental enquiry because he was not allowed to cross-examine Mr. Allabux and this fact alone cannot be said to have vitiated the departmental proceedings against him. He was thus given every opportunity to defend himself in the departmental proceedings according to the rules of enquiry and also according to the rules of natural justice and therefore his contention that the enquiry was illegal has no substance.

5. However assuming without admitting that the rules of enquiry were not properly observed before removing the plaintiff, it should be contended that the breach of these rules does not give any cause of action to the plaintiff. Where the limitations or qualifications of the Crown's power to dismiss its servants at will are found only in rules made under a statute which whilst expressly indicating that servants of the Crown hold office during His Majesty's pleasure also provides that such tenure is subject to the provisions of the rules made thereunder, nonetheless the breach of the provisions of such rules affords no cause of action at all. (See *Venkatrao* vs. *Secretary of State,* LXIV I. A., page 55.) It should be urged that under sections 240 and 243 of the Government of India Act of 1935 read with section 29 of the District Police Act, 1890, the tenure of Police Officer of the subordinate rank is subject to the provisions of the rules made by Government under section 29 but that a breach of those rules does not entitle the plaintiff to claim damages for wrongful dismissal, the reason being as pointed out in Venkatrao's case that the rules are directory and not mandatory. Finally it should be pointed out that in the present case the Inspector General of Police had even followed the procedure laid down in sub-section (3) of section 240 of the Government of India Act even though that section had no application to the plaintiff's case. After the District Superintendent of Police had submitted a report of the departmental enquiry, the Inspector General of Police passed an order on 30th April 1948 saying that it was proposed to remove the plaintiff from service and giving the plaintiff an opportunity of showing cause why the proposed punishment of removal should not be inflicted upon him. The actual order of removal from service was passed on 25th June 1948 after he had given his statement as required under the earlier order. The plaintiff was therefore afforded the protection of sub-section (3) of section 240 even though he was not entitled to it.

6. The plaintiff is therefore not entitled to any relief and it should be urged that the suit be dismissed with costs.

S. Bel. 13/50.

Spl. Suit No. 140 of 1949

Ex. 13.

I S S U E S

1. Whether plff proves that inquiry by the S.D. M., N.D. of Belgaum and departmental enquiry by the I.G.P and the order of discharge passed by the I.G.P. were improper and illegal as contended in paras 4, 5 and 6 of plaint ?
2. Whether plff is entitled to damages and if so what amount
3. Whether plff is entitled to the declaration sought in - Clause 12 sub- clause A to D ?
4. What decree ?

No more sought.

10-8-1950.

Sd.
Civil Judge, S.Dn, Belgaum

Civil Suit No. 140/1949.

In the Court of the Civil Judge, Senior Division,
Belgaum.

V. P. Hallikeri .... Plff.

Vs.

1) The Province of Bombay ... Dft.

Herein the application on behalf of plff is as follows:

1) The deft has produced some papers in this suit after being repeatedly called upon to produce all the papers in his possession and power relating to the Departmental - Proceedings and all the proceeding inquiry leading up to the said Departmental Proceeding.

For reasons best known to the Government, only some papers have been selected and produced in this suit. Some papers which would link up one stage of the proceeding to the other have been purposely withheld inspite of the repeat--ted requests made by the plff in this suit for producing all the papers from the beginning to the end connecting with the inquiry instituted in pursuance to the petition Ex. 52 made by one Rahimatulla and ending in the Depart--mental Proceedings consequent thereon.

2) Plff being helpless in this matter is seriously handi--capped as all the papers happen to be in the custody of the Government, the latter being too strong an opponent for the plff to meet.

3) Plff considers that the following papers connected with the matter are necessary for the ends of justice in this case.

(1) The report of the D.S.P. Belgaum dated 1-11-1946 in connection with the petition of Rahmtulla as to whether an appeal against the order of acquittal should be filed or no and as to whether the allegations made in the said petition need any further inquiry and the endorsement of the District

District Magistrate, Belgaum in C.R.I.A.A. 4/1946 dated 7-11-1946 referred to in Ex. 54 the Government Express Letter to the I.G.P. dated 31-1-1947 (copy enclosed).

(2) The original report of the D.S.P. Mr. Uren dated 16-4-1947, a private copy of which was produced by the present plff in the Departmental Proceedings i.e. the present Ex.-76 in this suit. Though this was called for from the D.S.P's Office in this suit, it has not been produced as yet.

(3) The report by S.P. Raosaheb ... R.Kolekar Belgaum's Office No. (S.D.P.O. N.D. No. 942/47) submitted with reference to D.S.P's Reference No. 30 dated 10-2-1947 in connection with the conduct of the investigating P.S.I. in the murder case of Haji Habib of Nipani.

(4) The list of Prosecution witnesses put in by the present plff i.e. the alleged defaulter in the Depart--mental Proceeding on 27-2-48 to the D.S.P. requesting him to offer all the Prosecution witnesses including Murullakhan Mehernigar, Rahimatulla and Mr. Allabax for cross-examina--tion as mentioned therein and for examining the Defence wi witnesses mentioned therein for which no sufficient facility was given to plff. The list of prosecution witnesses demanded for cross-examination is referred to in Ex. 74 in this suit but not produced in the suit.

(5) The order of the I.G.P. No. 460 dated 19-2-1948 to the D.S.P. Belgaum to hold Departmental proceedings and to submit the papers to him, for further action within 20 days in pursuance to the Government Letter to the I.G.P. dated 7-2-1948 Ex. 57 in this suit and the written state--ment submitted on 22-5-48 by the present plff to the I.G.P. in his Departmental proceeding as mentioned in the final order of the I.G.P. Ex. 92 in this suit.

Plff believes that these papers may be of much use to decide the matter in dispute. They all once formed part of the

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of the proceedings papers connected with the matters in dispute. Dft., may , therefore, please be called upon to produce at least these papers, if not -- others, out of the whole file of the papers from which only some have been selected anu produced by the deft in this suit.

The papers called for may be got produced at any time before arguments are heard in this suit.

Belgaum.
28-1-1952.

I, S.P. allikeri, plaintiff sole, nly affirm that what is stated in the above application is true to the best of my knowledge and information received and believed to be true.

Belgaum.
28-1-1952.

25 S.S

Belgaum Dist. Court Appeal No 304
of 1952

A Sub Inspector who had been removed from service had filed a suit in Belagum Court for a declaration that the order of his discharge passed by the Inspector General of Police on 25-6-1948 was illegal and void. He also claimed Rs 200 by way of damages for wrongful dismissal. The trial Court dismissed the suit holding that the order of dismissal was passed after a proper inquiry and that the order was legal. The plff filed an appeal to the District Court and the learned District Judge allowed the appeal and held that the Inquiry was improper and the order of dismissal was illegal and void. The question for decision is if a Second Appeal may be filed in the High Court against the decision of the District Judge.

The District Govt Pleader recommends a second appeal in this case. The facts leading to the suit may be stated briefly. Shri. Sadashiv Hallikeri was posted at Nipani as Sub Inspector of Police in 1946. On 21-3-1946 a prominent tobacco merchant named Haji Habib was ~~was~~ shot dead in his house at Nipani. The plff made an investigation and one Dadmahamad was sent up to the sessions Court for trial on a charge of murder. But he was acquitted for want of reliable evidence. The Govt declined to file an appeal against the order of acquittal. But a relative of the deceased moved the Govt for an inquiry into the conduct of the SubInspector. It was suggested that he had deliberately made an improper investigation and had manipulated things in such a manner that the prosecution was bound to fail. The Govt of Bombay first asked the I.G.P. to make an inquiry and send a Report. The I.G.P. asked the D.S.P. to make the inquiry. On 16-4-1947 the D.S.P. made a report exonerating the Sub Inspector. The I.G.P. agreed with it. The Govt did not however accept that Report. The Govt asked the District Magistrate to make an inquiry. The D.M. in turn entrusted the inquiry to his Prant Officer Shri.

Allabux. The latter made his first report in which he held that the Sub Inspector had failed to take the proper precautionary measures for preventing the murder . The Collector then asked him to report about the Investigation made by the Sub Inspector . Shri. Allabux then reported that the Sub Inspector investigated on wrong lines from the beginning. The name of the accused had trasnpired in the dying declaration made to the subinspector by the deceased before his death. But the Sub Inspector failed to refer to that fact in his first Information Report. The Sub Inspector also neglected or avoided to make a Panchna a of the scene of the offence immediately . That Panchnama was made later. It was also found that the Sub Inspector had made some alterations in his special report sent to his superiors and those alterations were favourable to the accused. The District Magistrate therefore informed the Govt that the Sub Inspector was guilty of making an improper,and perhaps a deliberately misleading,investigation of the crime.

The Govt took a serious view of the matter and on 7-2-1947 the Govt asked the I.G.P. to hold departmental proceedings against the Sub Inspector and to report compliance to the Govt. The I.G.P. directed his D.S.P. Shri. Malpathak to hold the inquiry. Shri Malpathak framed three charges. After a full inquiry he held the first two charges proved. The I.G.P. agreed with those findings, and after issuing a show cause notice to the defaulter he passed orders on 25-6-1948 removing the plff from service.

The plff urged in the trial Court that the inquiry was vitiated on 6 grounds. They may be briefly summarised as follows:-

(1) The Inquiry was held in an atmosphere of suspicion and prejdice . The Govt had virually directed the I.G.P. to dis miss the plff.

(2) Shri. Allabux was not offered for cross examination inspite of the plffs request.

(3) The preliminary inquiry was not held according to Rule 1284.

(4) Some of the prosecution witnesses were not offered for cross examination in spite of request by the plff.

(5) Plff was not given proper opportunity to examine witnesses in his defence.

(6) Copies of Statements and other papers were not supplied to him

The learned Judge of the trial Court pointed out that Grounds Nos. 3 to 6 were not raised or referred to in the pleadings and they could not be allowed to be raised at the time of the arguments. There was no substance in ground No 1 . As regards ground No 2 Shri. Allabux was not examined for

the prosecution. nor was his Report to the District Magistrate taken on the Record of the proceedings. There was no right to the plff to demand that Shri. Allabux should be offered for cross examina-tion. The trial Court held that the inquiry held by the D.S.P. Shri. Malpathak was full and fair and the resulting order of dismissal from service was proper and legal. The plffs suit was therefore dismissed.

The learned District Judge has in appeal mainly relied on two circumstances for his conclusion that the inquiry was held in an atmosphere of prejudice and suspicion. He quoted the letter dated 7-2-1948 which the Govt had written to the I.G.P. in which the Govt had expressed the view that the charges of improper investigation were proved and that the plff was not fit to continue in service . This was a confidential letter from the Govt. to the I.G.P. and it should not have been allowed to be used as evidence. It seems that the Govt. Pleader in charge of the case failed to claim privilege against the use of this letter in evidence . But even then the letter must be read as a whole. In the same letter the Govt directed that a Departmental inquiry should be held against the plff and that a show cause notice should be also issued to him. The letter does not amount to a direction to the I.G.P. to dismiss the plff after making a show of an inquiry as suggested. The interpretation put on this letter by the learned District Judge is not fair or justifiable. It may be also pointed out that the actual inquiry was held by Shri. Malpathak. The record of the inquiry shows that Shri, Malpathak framed specific charges and gave full opportunity to the defaulter to cross eaamin the prosecution witnesses, and to lead his evidence in defence . There is no evidence to show that the above letter of the Govt was actually before Shri. Malpathak although it was mentioned in an index of papers of the file of the I.G.P. That whole file was no part of the proceedings of the inquiry . The learned District Judge was not justified in holding that neither Shri. Malpathak nor the I.G.P. were in a position to come to their own independent conclusion in the inquiry. It may be noted that Shri. Malpathak actually held one charge as not proved. That shows that he exercised his own judgment on the evience forming part of the inquiry proceedings . The I.G.P. also had taken his own independent view of the whole case.

Another circumstance relied on by the learned District Judge

is the refusal on the part of the inquiry officer to call Shri. Allabux for crossexamination. It seems that the plff had suggested that there was personal enmity between him and Allabux and that Shri. Allabux had made a deliberately adverse report to the District Magistrate against the plff. The plff therefore demanded that Shri. Allabux may be produced for cross examination. This demand would have been justified if Shri. Allabix had been examined in the case as a prosecution witness; or even if his Report to the D.M. had been admitted in evidence in the Departmental Inquiry . But neither of these two things had happened. Shri. Allabux was not examined as a witness, nor was his secret report to the D.M. admitted in evidence . The learned District Judge is clearly wrong in assuming that the Report made by Shri. Allabux to the D.M. had been admitted as evidence in the case. This Report was mentioned in the Index of Papers of the I.G.P.'s File. But that did not mean that it was admitted in evidence in the inquiry proceedings. There was therefore no right to demand that Shri. Allabyx should be produced for cfoss examination. There is nothing in the Report of Shri. Malpathak to show that he was in any way influenced by the Allabux Report to the D.M.

Another circumstance relied on by the learned District Judge is that the inquiry officer asked the plff to drop Shri. Wandkar who had been summoned for his cross examination. The Inquiry officer had recorded that the defaulter (plff) had voluntarily agreed to drop him. The learned District Judge held that the plff must have been forced by improper pressure to drop Shri. Wandkar. But there are so circumstances on record on which such an inference can be based. The rule laid down in Nerlekars case could not therefore apply to the present case. In Nerlekars case there were circumstances to show that the defaulter had been virtually compelled to drop certain witnesses . The facts in the present case are different.

On the whole therefore it can be urged that the view taken by the learned District Judge is not proper or justifibale. In this case it seems that the District Govt Pleader did not exercise care and caution in the matter of production of documents. But even then the conclusion reached by the District Judge that the inquiry officer or the I.G.P. had no independence of Judgment is not justified. This would be therefore a proper case for going to the High Court in Second Appeal. The points involved are all points of Law.

The Govt Pleader High Court may be therefore requested to file a second appeal in time against the Judgment of the learned District Judge.

SRe 22/3/54

Jt. Secy.

Secy. H.D. 24/3/54

No 7705/E dt 23/3

2975

Suits:
Belgaum.
For a declaration that the order of the Inspector General of Police dated the 25th June 1948 removing the plaintiff from Government Service is illegal and for recovery of Rs. 200 as damages.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 10174
Bombay Castle, 21st April 1954.

Read Government Resolution, Legal Department No.7295, dated the 30th May 1950.

Endorsement from the District Government Pleader,

In the Court of the Civil Judge (Senior Division): Belgaum.	:	Belgaum
Civil Suit No. 140 of 1949.	:	No. 391
Sadashiv Prabhakar Hallikeri. ... Plaintiff;	:	dated the
versus	:	
The State of Bombay. ... ... Defendant.	:	14th July

1952 stating that the suit noted in the margin was decided by the Civil Judge (Senior Division), Belgaum on the 10th July 1952 when the following order was passed :-

" Suit is dismissed. Plaintiff to pay the costs of defendant and bear his own. "

RESOLUTION :- The result of the suit is recorded.

By order and in the name of
the Governor of Bombay,

signed R T Katarki
(R.T. Katarki)
Deputy Secretary to Government.

To

The Home Department,

The Inspector General of Police, Poona,

The District Superintendent of Police, Belgaum,

The District Government Pleader, Belgaum.

cks/17.4.

Submitted for signature
17/4

Sol (M.L) 18/4

S.S 19/4

D.S (Civil)

Issued 21/4

31 99

Suits:
Belgaum.
For a declaration that the order of the Inspector General of Police dated the 25th June 1948 removing the plaintiff from Government service is illegal and for recovery of Rs.200 as damages.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 12042/E.
Bombay Castle, 12th May 1954.

Read Government Resolution, Legal Department, No.10274/E

In the Court of the Civil Judge (Senior Division), Belgaum. Civil suit No.140 of 1949.		dated the
Sadashiv Prabhakar Hallikeri .. versus. The State of Bombay. ...	Plaintiff Defendant.	21st April 1954.

S.A 2112

RESOLUTION:- Sanction is accorded to the defence of Civil Appeal No.304 of 1952 in the Court of the District Judge, Belgaum on the lines of the brief accompanying Government Resolution, Legal Department No.7295 dated the 30th May 1950 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division), Belgaum dated the 10th July 1952.

By order and in the name of the
Governor of Bombay,

original R. T. Katarki
(R. T. KATARKI),
Deputy Secretary to Government.

To

The Home Department,
The Inspector General of Police, Poona,
The District Superintendent of Police, Belgaum,
The District Government Pleader, Belgaum.

Submitted for signature
6/5

forwarded 12/5

MAP/-
6/5.

S S 10/5

D.S (Civil)

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File w S. Belgium 13/50

13/5

SS 13/5

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S. Belgium 13/5/14.